



August 14, 2002

Mr. Claud H. Drinnen  
First Assistant City Attorney  
City of Amarillo  
P.O. Box 1971  
Amarillo, Texas 79105-1971

OR2002-4475

Dear Mr. Drinnen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 167114.

The Amarillo Police Department (the "department") received a request for information relating to a named nursing home resident. You state that you have provided some of the requested information to the requestor. You claim, however, that the remainder of the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Subchapter E of chapter 242 of the Health and Safety Code provides for procedures governing investigations conducted by the Department of Human Services (the "DHS") or a "designated agency"<sup>1</sup> into reports of abuse and neglect in institutions such as nursing homes. Section 242.127 provides:

A report, record, or working paper used or developed in an investigation made under this subchapter and the name of any person making a report under this subchapter are confidential and may be disclosed only for purposes consistent with the rules adopted by [Texas Board of Human Services] or the designated agency.

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<sup>1</sup>Section 242.121 of the Health and Safety Code defines "designated agency" as "an agency designated by a court to be responsible for the protection of a resident who is the subject of a report of abuse or neglect."

You state that the submitted documents were used in an investigation made under subchapter E of chapter 242 of the Health and Safety Code. It is apparent from the face of one of the documents that it was transferred from DHS to the department, and apparently used in an investigation made under subchapter E of chapter 242 of the Health and Safety Code. However, it does not appear that the other two submitted department reports were transferred to or from the DHS, or otherwise used in an investigation made under subchapter E of chapter 242 of the Health and Safety Code. Generally, confidential information may be transferred between governmental bodies without destroying its confidential character. *See* Open Records Decision Nos. 655 (1997), 650 (1996). Accordingly, must withhold from disclosure only the DHS investigation report under section 552.101 in conjunction with section 242.127 of the Health and Safety Code.

We turn now to the information not excepted by section 552.101. You argue that case report number 2001-00127214 is excepted from disclosure under section 552.108(a)(2). Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. You indicate that case report number 2001-00127214 pertains to a case that did not result in conviction or deferred adjudication. Accordingly, we conclude that you may withhold case report number 2001-00127214 under section 552.108(a)(2).

We note, however, that information normally found on the front page of an offense report is generally considered public. *See generally* Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, you must release the types of information that are considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. Although section 552.108(a)(2) authorizes you to withhold report number 2001-00127214 from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007.

You also contend that offense report 1999-00067090 is excepted under section 552.108(a)(1) and (a)(2). We note, however, that the statute of limitations for assault, the crime alleged in offense report number 1999-00067090, is two years from the date of the commission of the offense. Code Crim. Proc. art. 12.02; *see also* Penal Code § 22.01. The offense in offense report number 1999-00067090 occurred on July 25, 1999, more than two years prior to the department's receipt of the current request. You have not adequately explained how or why release of this information would interfere with the investigation of this offense. Thus, because you have not shown the applicability of section 552.108(a)(1), we conclude that you may not withhold offense report number 1999-00067090 under section 552.108(a)(1). You also argue that offense report number 1999-00067090 is excepted under section 552.108(a)(2). However, as previously stated, this exception addresses information concerning an investigation that concluded in a result other than conviction or deferred adjudication. As you state that "the case is still open," section 552.108(a)(2) is not applicable to offense report number 1999-00067090.

In summary, the department must withhold the DHS investigation report from disclosure under section 552.101 in conjunction with section 242.127 of the Health and Safety Code. With the exception of basic information, the department may withhold offense report number 2001-00127214 from disclosure based on section 552.108(a)(2). The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



V.G. Schimmel  
Assistant Attorney General  
Open Records Division

VGS/sdk

Ref: ID# 167114

Enc: Submitted documents

c: Ms. Debbie Davis  
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(w/o enclosures)